

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Television Systems)	MB Docket No. 87-268
And Their Impact upon the)	
Existing Television Broadcast Service)	

To: Marlene H. Dortch, Secretary
Office of the Secretary

ATTN: The Commission

COMMENTS

1. KOCE-TV Foundation ("KOCE"), licensee of noncommercial educational digital television station KOCE-DT, Huntington Beach, California, Facility ID 4328, respectfully submits these Comments to request that the Commission revise the information regarding KOCE-DT to be included in the Proposed DTV Table of Allotments Information, as set forth in Appendix B of the Seventh FNPRM¹ in the above referenced docket.

2. As the Commission noted in the Seventh FNPRM, KOCE filed a request seeking a waiver of the Form 381 filing deadline,² asking the FCC to certify that KOCE-DT would operate with its maximized facilities.³ These Comments are perhaps KOCE's last opportunity to

¹ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Seventh Further Notice of Proposed Rule Making*, 21 FCC Rcd 12100, FCC 06-150, MB Docket No. 87-268, Appendix B, pg. 59 (2006) (the "Seventh FNPRM").

² Seventh FNPRM, at fn 60.

³ See November 12, 2004 e-mail from R. Bruce Reed, Vice President of KOCE and Station Manager of KOCE-DT, sent to form381@fcc.gov (the "November 12th E-mail"). A copy of this e-mail message is attached hereto as Attachment A. KOCE has doggedly pursued the correction of the DTV Table to include KOCE-DT's maximized facilities. See Letter dated December 30, 2004, from Nathaniel J. Hardy, counsel to KOCE, to Marlene H. Dortch, Secretary, FCC

correct an innocent mistake that forced KOCE to rest its future on facilities that were intended only to be used for a short period of time, instead of the maximized facilities that are *now licensed by the Commission*. See BLEDT-20041117ADG.

3. As the Commission determined in the Second Report and Order,⁴ a licensee that failed to timely submit a Form 381 would be allotted the same post-digital transition facilities as those its station was operating on November 5, 2004.⁵ Unfortunately, KOCE did not timely submit its Form 381 due to an innocent mistake by a KOCE staff member. Therefore, KOCE-DT was allotted the post-digital transition facilities that were in operation as of November 5, 2004 - those authorized under special temporary authority BMDSTA-20031105AIS, as extended by BEDSTA-20040615ACP (the "STA").⁶ Had it timely submitted its Form 381, KOCE would have certified that KOCE-DT's post-digital facilities would be the station's maximized facilities. On February 4, 2005, three days after the Public Notice was released, the Commission granted KOCE-DT's maximized license. See BLEDT-20041117ADG. By these comments, KOCE

(reiterating desire to pursue maximized facilities along with a request for extension of STA); see also Letters dated July 22, 2005 and June 30, 2006, from counsel to KOCE to Secretary Dortch.

⁴ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, FCC 04-192, 19 FCC Rcd 18279 (2004) (the "Second Report and Order").

⁵ *Id.* at para. 41 ("[I]n establishing the authorized facilities and service area for a station not certifying to fully replicate or maximize, we will provide for the station to serve the same geographic area served by its existing DTV facilities, operating as of the certification date [November 5, 2004].").

⁶ See *DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions, Public Notice*, DA 05-273, pg. 3 (released February 1, 2005) ("KOCE-TV, Huntington Beach, CA (NTSC Channel 50; DTV Channel 48; correct certification to reflect actual operation as described by STA authorization BMDSTA-20031105AIS.)") (the "Public Notice"). KOCE has requested a further extension of this STA to ensure that at least the facilities represented in the STA would be protected post-digital transition. See BEDSTA-20050722ANC. The extension request remains pending.

respectfully requests that the proposed Table of Allotments be revised to reflect KOCE-DT's licensed, maximized facilities. A copy of the proposed revision is attached hereto as Attachment B.

4. Innocent Failure to Timely File Form 381. Through an inadvertent technical error by a KOCE employee, KOCE failed to timely file Form 381 to certify that KOCE-DT's post-transition digital facilities should be based upon KOCE-DT's maximized facilities. The KOCE employee completed and validated the Form 381, but did not realize that when an application is "validated" it is not technically "filed" - a truly innocent and understandable mistake for the employee who was using the Commission's electronic filing system for his first time. The Form 381 was completed, validated and ready to be filed on October 21, 2004 - well in advance of the November 5, 2004 filing deadline.⁷ It is, therefore, apparent that KOCE made a good faith effort to comply with the Form 381 filing deadline more than two weeks before the deadline, even though the form was not officially filed. It was simply an unfortunate, but all too human, error that caused the filing to be flawed.

5. Upon learning of the error a few days after the filing deadline, KOCE attempted to submit the Form 381, but the Commission's electronic filing system prohibited it from doing so, as the deadline had passed. KOCE then promptly notified the Commission of its innocent mistake.⁸ In the alternative, KOCE requested that, if the Commission would not waive the Form 381 filing deadline, it protect KOCE-DT's STA facilities, as set forth in the Second Report and Order. The Commission chose to substitute KOCE-DT's facilities as specified in the STA for the maximized facilities. *See* Public Notice.

⁷ The November 12th E-mail included evidence that the validated application was in the Commission's electronic filing system on October 21st.

⁸ *See* November 12th E-Mail, *supra* fn 3.

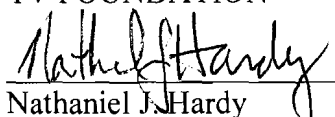
6. Licensing of Maximized Facilities. KOCE is mindful of the years of hard work that the Commission has spent to arrive at this point in the digital transition. The proposal of a final DTV Table of Allotments is concrete evidence of this work. However, a revision in the Proposed DTV Table of Allotments Information as proposed herein would neither strain the Commission's resources nor injure other digital television licensees who depend upon a stable information source on which to base their decisions. As the Commission has now licensed KOCE-DT's maximized facilities, it seems that a revision to the Proposed DTV Table of Allotments Information would be ministerial in this case and would not present the Commission with any new parameters that would need to be reviewed. Further, as KOCE-DT is now licensed for its maximized facilities, other digital television licensees have been put on notice that KOCE plans to operate with these facilities.

7. It also should be noted that the Commission already has approved the use of the former KOCE-DT STA facilities as an auxiliary antenna for KOCE-DT. *See* BXPEDT-20050805AAB (the "Auxiliary Antenna"). These facilities currently are included in the Proposed DTV Table of Allotments Information. An application to license the Auxiliary Antenna is pending before the Commission. *See* BXLEDT-20060706AEX. Because both facilities met the FCC's requirements for interference protection to other stations, and since the difference in the service contours of the two facilities is minuscule (as shown in Figure 2 of the Technical Statement that accompanied the Auxiliary Antenna construction permit application), the substitution of the licensed KOCE-DT primary facilities for the permitted KOCE-DT auxiliary facilities will have negligible impact on the outcome of any interference studies based upon the new Table, once adopted, but will record the correct facilities with which KOCE-DT will be operating on a primary basis, as provided by its license.

8. Conclusion. As discussed above, it is undeniable that KOCE made a good faith effort to file its Form 381 more than two weeks before it was due. The Form 381 was untimely filed solely because the employee who attempted to file the Form 381 misunderstood that "Validated" did not mean that the form was "Filed." KOCE – a nonprofit, noncommercial educational entity – has diligently worked to meet the Commission's goal of achieving a rapid transition to a digital television world and has spent several million dollars in preparing for the digital transition. A sizable portion of these funds came to KOCE in the form of Federal grants. It would be unfortunate, in the least, for an innocent mistake to prevent KOCE from operating KOCE-DT with its maximized facilities post-digital transition, particularly in light of the fact that the Commission licensed KOCE-DT to operate with maximized facilities.

9. As this may very well be KOCE's last opportunity to correct its mistake, it respectfully requests that the Commission revise the Proposed DTV Table of Allotments Information to reflect KOCE-DT's maximized facilities.

Respectfully submitted,
KOCE-TV FOUNDATION

By: 
Nathaniel J. Hardy
Its Counsel

IRWIN, CAMPBELL & TANNENWALD, P.C.

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Washington, D.C. 20036-3101

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January 25, 2007

ATTACHMENT A

Nathaniel Hardy

From: Bruce Reed [breed@koce.org]
Sent: Friday, November 12, 2004 5:50 PM
To: form381@fcc.gov; Nate Hardy/Irwin, Campbell, Tannenwald
Cc: ryoakum@koce.org; Rick.Chessen@fcc.gov; Kevin Walsh/Irwin et al; MRogers@koce.org; S. Merrill Weiss
Subject: KOCE-DT Form 381 Inadvertent Missed Filing Deadline
Attachments: KOCE-DT_Form381validated10-21-04.pdf; KOCE-DT_STA#2_Contour Comparison.pdf



KOCE-DT_Form381KOCE-DT_STA#2_C
validated10-21-... ontour Comparis...

To FCC Media Bureau Staff --

KOCE-TV Foundation, licensee of Station KOCE-DT, Channel 48, Huntington Beach, CA, intends to maximize its facilities on its assigned DTV channel as provided in its construction permit in File Number BNPEDT-20031222ABT. As the Commission staff is aware, KOCE-DT is a part of the Master Antenna System project at Mt Wilson, along with several other stations. It has spent the last six years designing and implementing the operation at that site. Indeed, the construction permit facilities now are built and ready to license.

KOCE personnel uploaded the necessary information for Form 381 on October 21, 2004, indicating the Station's intention to maximize. Through inadvertency, the form was not correctly filed but only validated and left stored on the FCC CDBS electronic filing system. It was only discovered after the November 5 deadline for the filing of Forms 381 that the last step of filing the form was not completed. A copy of a printout of the Form 381, dated October 21, is attached in file <KOCE-DT_Form381validated10-21-04.pdf> to prove the station's intent to file the Form 381 in a timely manner. Note that the Form 381 still appears in a validated state on the FCC web site in the KOCE account.

If the Commission is unable to accept the Form 381 subsequent to the deadline, we understand from our reading of the Commission's Report and Order in the Second DTV Periodic Review NPRM, at paragraph 41, that "in establishing the authorized facilities and service area for a station not certifying to fully replicate or maximize, [the Commission] will provide for the station to serve the same geographic area served by its existing DTV facilities, operating as of the certification date." In the case of KOCE, the facilities in operation on November 5 were those of its STA in File Number BMDSTA-20031105AIS (as extended in File Number BEDSTA-20040615ACP). The Station's STA facilities provide essentially the same service area as provided by its construction permit facilities, as shown in the attached file <KOCE-DT_STA#2_Contour Comparison.pdf>. Thus, if the Commission protects the KOCE-DT STA service area, it effectively will be protecting the KOCE-DT maximized service area.

KOCE plans to file Form 382 indicating its intention to remain on its currently allocated DTV channel. It further intends to file its application to license KOCE-DT under its outstanding construction permit within the next several days. This information is provided to the Commission to clarify the intentions of KOCE given the inadvertent incorrect filing of its Form 381 and to allow the Commission to correctly reflect the KOCE facilities in its database to be used in the repacking process. Given all the effort that KOCE has expended in designing and constructing its maximized facilities, it would be a significant waste of resources and effort and a terrible loss in service to the public if the Commission were not to preserve the station's DTV service area because of an innocent mistake by the station.

Respectfully submitted,

R. Bruce Reed
Vice President & Station Manager -- KOCE-TV Foundation

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB FOR FCC USE ONLY
3060-1077 (October 2004)

FCC 381

PRE-ELECTION CERTIFICATION FORM

FOR COMMISSION USE ONLY
FILE NO.

Must Be Filed by: November 5, 2004

Read INSTRUCTIONS Before Filling Out Form

Section I - General Information

Licensee/Permittee Information

1. Legal Name of the Applicant
BD OF TRUSTEES, COAST COM COLLEGE DISTRICT

Mailing Address

15751 GOTHARD STREET

ATTN: KOCE

City

HUNTINGTON BEACH

State or Country (if foreign address)

CA

ZIP Code

92647 - 0476

Telephone Number (include area code)

7148950819

E-Mail Address (if available)

BREED@KOCE.CCCD.EDU

Station / Facility Information

2. FCC Registration Number:

Call Sign

KOCE-TV

Facility ID Number

4328

Community of License: City

HUNTINGTON BEACH

State

CA

3. Currently Assigned Channels:

a. DTV Channel: 48 Not Applicable

b. NTSC Channel: 30 Not Applicable

Contact Information (if different from licensee/permittee)

4. Contact Representative (if other than Applicant) Firm or Company Name
BD OF TRUSTEES, COAST COM COLLEGE DISTRICT

Mailing Address

15751 GOTHARD STREET

ATTN: KOCE

City

HUNTINGTON BEACH

State or Country (if foreign address)

CA

ZIP Code

92647 - 0476

Telephone Number (include area code)

7148950819

E-Mail Address (if available)

BREED@KOCE.CCCD.EDU

Purpose of Form:

5. The purpose of this Pre-Election Certification Form is for licensees/permittees to provide and certify the technical information that will be used to evaluate elections made during the channel election process. Licensees/permittees make these certifications regarding database accuracy and intent to replicate/maximize to provide certainty with respect to their technical data for consideration by others participating in the channel election process. (SELECT ONE)

a. ☒ Certification

b. ☐ Amendment

[Validate](#) [Save](#) [Menu](#)

Section II - CERTIFICATIONS

All broadcast licensees and permittees participating in the digital channel election process may make the following certifications. Licensees/permittees that do not submit this form by the deadline on page one will be presumed (1) to agree that their database technical information on file with the Commission is accurate and complete; and (2) not to intend to replicate or maximize, and such decision will be taken into account in the Commission's determination of final channel assignments.

Replication/Maximization Deadlines

By completing the appropriate certification below, licensee/permittee may certify its intent to construct and operate its allotted "replication" facilities or already-authorized "maximization" facilities on its post-transition channel. Licensees/permittees are reminded that false certifications may result in fines and loss of license. Additionally, licensee's/permittee's failure to replicate or maximize to the extent it certifies will result in the loss of interference protection to those service areas not replicated or maximized.

Licensee/permittee should also be aware of the following replication and maximization deadlines that pertain to current DTV facilities and that affect the right to "carry over" interference protection to its post-transition channel. (Failure to meet the replication/maximization requirements will cause the licensee/permittee to lose interference protection to the unused portion of the associated area as of the applicable interference protection deadline. Furthermore, a licensee/permittee failing to meet these deadlines will lose the ability to "carry over" its interference protection to its unserved DTV service area on its post-transition channel.):

- **July 1, 2005** -- Deadline for DTV licensees affiliated with the top-four networks (i.e., ABC, CBS, Fox, and NBC) in markets 1-100. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based. The number of viewers served by a station's 1997 facility on which its replication is based will be determined using population data from the year 2000 census.
- **July 1, 2006** -- Deadline for all other commercial DTV licensees as well as noncommercial DTV licensees. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized DTV facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication coverage was based. The number of viewers served by a station's 1997 facility on which its replication is based will be determined using population data from the year 2000 census.

I. Replication/Maximization Certifications

Licensees/permittees must indicate how their channel elections should be evaluated for purposes of interference protection analysis. (SELECT ONE):

- | | | |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| a. <input checked="" type="radio"/> | Licensee/permittee hereby certifies that it will operate its post-transition DTV station at maximized facilities, as authorized by license or construction permit. FCC File No. | Licensee/permittee must provide FCC File No. here.
BMPEDT - 20031222ABT |
| b. | Licensee/permittee hereby certifies that it will operate its post-transition DTV station pursuant to a pending DTV application for maximization facilities that has not been authorized because of a pending international coordination issue. | Licensee/permittee must provide FCC File No. here. |
| c. | Licensee/permittee hereby certifies that it will operate its post-transition DTV station based on its allotted replication facilities . | |
| d. | Licensee/permittee hereby certifies that it does not have a DTV channel allotment , and will operate its post-transition DTV station based on its currently authorized NTSC license or construction permit. FCC File No. | Licensee/permittee must provide FCC File No. here. |

e.

Licensee/permittee hereby certifies that it will **neither replicate nor maximize**, and will operate its post-transition DTV station pursuant to the following authorized DTV facilities:
(SELECT ONE)

Licensee/permittee must provide FCC File No. here.

- i. License
- ii. Construction Permit
- iii. STA

2 Database Certification.

Licensee/permittee hereby certifies that it has reviewed its database information on file with the Commission and that its **technical information** is accurate and complete, to the best of its knowledge.

If no, licensee/permittee must attach an explanation, including appropriate

engineering
data,
as
an
Exhibit
to
this
form.

I certify that the statements and certifications in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Typed or Printed Name of Person Signing

MEL ROGERS

Signature

Typed or Printed Title of Person Signing

PRESIDENT/KOCE-TV

Date

10/21/2004

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Validate Save Clear Menu

LICENSE

<u>FCC 349 -- Application For Authority To Construct Or Make Changes In An FM Translator Or FM Booster Station</u>	Mar 2001
<u>FCC 350 -- Application For An FM Translator Or FM Booster Station License</u>	Apr 2001
<u>FCC 381 -- Pre-Election Certification Form</u>	Oct 2004
<u>FCC 395-A -- Cable Television Annual Employment Report</u>	Apr 2000
<u>FCC 395-B -- Broadcast Station Annual Employment Report</u>	Apr 2000
<u>FCC 396 -- Broadcast Equal Employment Opportunity Program Report</u>	Mar 2003
<u>FCC 396-A -- Broadcast Equal Employment Opportunity Model Program Report</u>	Feb 2003
<u>FCC 396-C -- Multi-Channel Video Program Distributor EEO Program Annual Report</u>	Sep 2003

Work in Progress:287126

Select	Form Title - Description	Status/ Ref No.
	<u>FCC 323-E -- Ownership Report for Noncommercial Educational Broadcast Stations</u>	FILED
	323E	20030730ALD
	Created: Jul 30 2003 2:55PM	
	<u>FCC 337 -- Application for Extension of Time to Construct a Digital Television Broadcast Station</u>	FILED
	FEBRUARY 2003 DTV EXTENSION REQUEST	20030221AAS
	Created: Feb 12 2003 4:27PM	
	<u>FCC 381 -- Pre-Election Certification Form</u>	VALID
	FCC FORM 381, PRE-ELECTION CERTIFICATION FORM	N/A
	Created: Oct 21 2004 7:39PM	

[File Form](#)[Test File](#)[Print Form](#)[Pay Fee](#)[Update Desc](#)[Copy Form](#)[Delete Form](#)[User's Guide](#)

FCC - Federal Communications Commission - CDBS Electronic Filing System - Thu Oct 21 19:58:10 EDT 2004

System Status

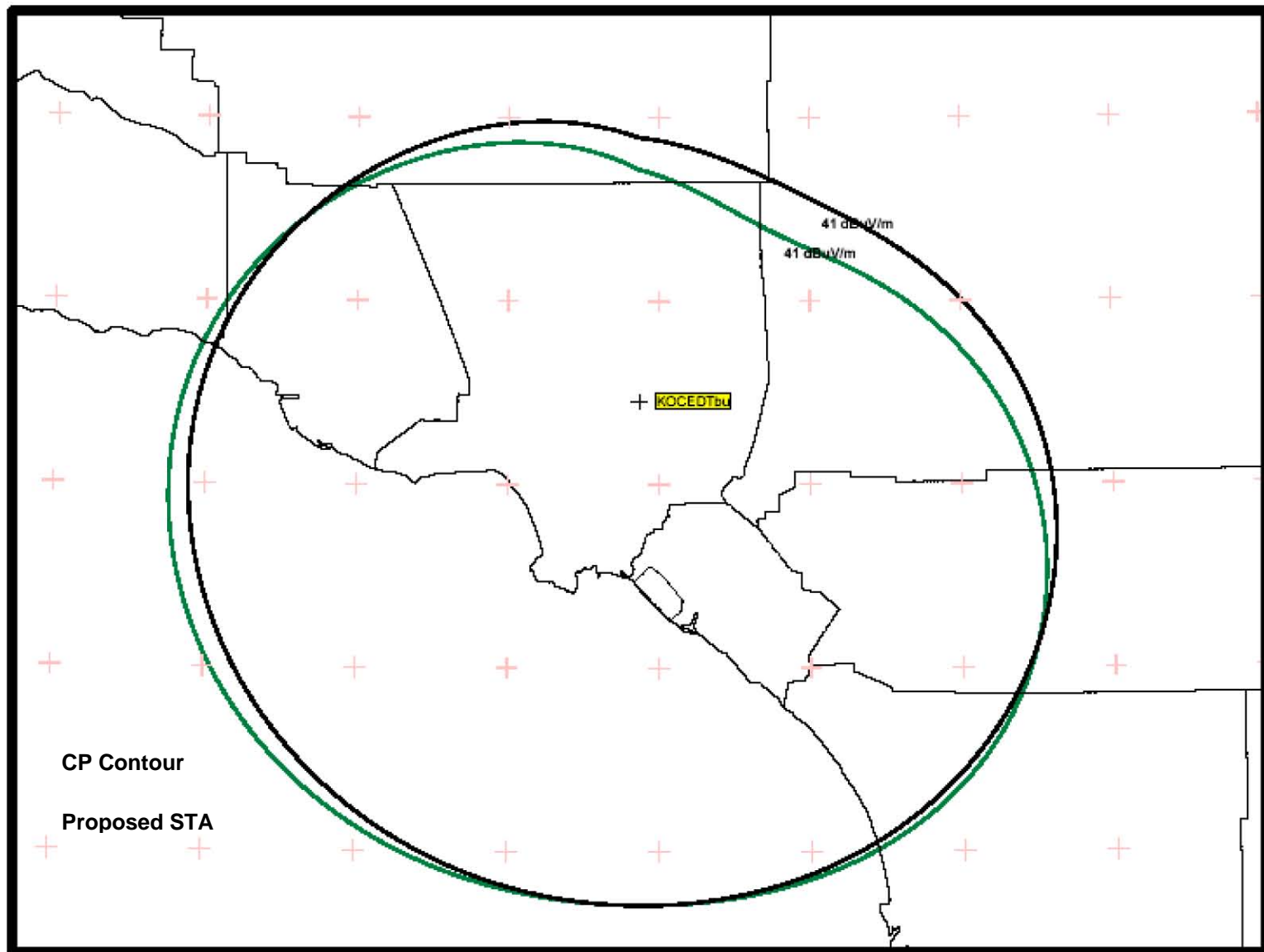


Figure 1 — Comparison of Construction Permit & Proposed STA 41 dBu Contours of KOCE-DT

ATTACHMENT B

I. Current Proposed DTV Table of Allotments Information for KOCE-DT, Huntington Beach, California

Facility ID	State and City		NTSC	DTV								
			Chan	Chan	ERP (kW)	HAAT (m)	Antenna ID	Latitude (DDMMSS)	Longitude (DDMMSS)	Area (sq km)	Population (thousands)	Percent Interference Received
4328	CA	Huntington Beach	50	48	855	921	64663	341337	1180357	36556	15107	0.3

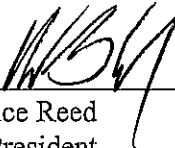
II. Revised Proposed DTV Table of Allotments Information for KOCE-DT, Huntington Beach, California

Facility ID	State and City		NTSC	DTV								
			Chan	Chan	ERP (kW)	HAAT (m)	Antenna ID	Latitude (DDMMSS)	Longitude (DDMMSS)	Area (sq km)	Population (thousands)	Percent Interference Received
4328	CA	Huntington Beach	50	48	1000	949	65049	341335.3	1180357.7	35221	15140	*

* To be provided by the Commission.

DECLARATION

I have reviewed the information in the preceding Comments regarding KOCE-DT, Huntington, California, and declare that it is true and correct to the best of my knowledge, information and belief.



R. Bruce Reed
Vice President
KOCE-TV Foundation

January 11, 2007